

1 THE HONORABLE RICARDO S. MARTINEZ  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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10 ROBERT W. CABELL,

11 Plaintiff,

12 v.

13 ZORRO PRODUCTIONS, INC., JOHN GERTZ,  
14 and STAGE ENTERTAINMENT LICENSED  
PRODUCTIONS,

15 Defendants.

16 No. 2:13-cv-00449-RSM

17 ZPI DEFENDANTS' STATEMENT IN  
18 RESPONSE TO CABELL'S MOTION  
19 FOR LEAVE TO FILE UNDER SEAL

20 NOTE ON MOTION CALENDAR:  
21 January 31, 2014

1 Defendants Zorro Productions, Inc. and John Gertz (hereinafter, the “ZPI Defendants”)  
 2 hereby notify the Court that Plaintiff Robert W. Cabell’s (“Plaintiff”) Motion for Leave to File  
 3 Under Seal (“Motion to Seal”), Dkt. No. 59, was mooted by way of an agreement amongst the  
 4 parties. Plaintiff’s Motion to Seal sought leave to file under seal certain documents that the  
 5 ZPI Defendants had marked as confidential under the operative protective order (Dkt. No. 33,  
 6 Ex. G), as well as a memorandum that related information contained in those documents.  
 7 Subsequent to the filing of the Motion to Seal, the parties conferred and agreed to publically  
 8 file versions of documents that had been redacted to remove highly-sensitive information. *See*  
 9 Praecipe as to Dkt. Nos. 60-61, filed concurrently herewith. As such, Plaintiff’s request to file  
 10 unredacted versions of those documents, embodied in his Motion to Seal, is moot. Assuming  
 11 the Praecipe is acceptable to the Court, there will no longer be any need for the Court to rule  
 12 on Plaintiff’s Motion to Seal.

13 To the extent that ZPI Defendants’ response submission is still required to satisfy LCR  
 14 5(g)(3)(B), the applicable legal standard could have potentially required ZPI Defendants to  
 15 meet a “compelling reasons” standard to obtain a court order sealing documents filed in  
 16 opposition to the presently-pending motion to dismiss. *Kamakana v. City and County of*  
*Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). The decision to seal documents is “one best  
 17 left to the sound discretion of the trial court” upon consideration of “the relevant facts and  
 18 circumstances of the particular case.” *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978).  
 19 This Court previously entered an Order enunciating the “good cause” that existed for its entry  
 20 of ZPI Defendants’ requested two-tiered protective order during the jurisdictional discovery  
 21 and motions stage of proceedings in this matter, which this Court stated was “warranted to  
 22 shield Defendants from the specific harm of providing proprietary information to a  
 23 competitor.” Order, at 8:11-17 (Dkt. No. 54). The Order further indicated that this stage of the  
 24 proceedings had only a limited purpose, addressing matters related to personal jurisdiction. *Id.*  
 25 at 5:9-22. Such a limited-purpose proceeding was not directly addressed in *Kamakana, supra*.  
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1 Accordingly, the same reasoning that supported the Court's entry of its Order of October 2,  
2 2013, could have further supported a court order keeping under seal the documents referenced  
3 in Plaintiff's Motion to Seal. If this Court nevertheless denies Plaintiff's Motion to Seal, ZPI  
4 Defendants would request that the Court discretionarily withdraw Dkt. Nos. 60-61 from the  
5 record rather than unseal them, pursuant to LCR 5(g)(6). However, based on the parties'  
6 agreement to Plaintiff's redacted filings that would replace via Praecipe the filings previously  
7 in issue, ZPI Defendants respectfully submit that a ruling on Plaintiff's Motion to Seal is  
8 simply unnecessary.

9 DATED this 29th day of January, 2014.

10 COZEN O'CONNOR

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Zorro Productions, Inc. and John Gertz

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3                   **CERTIFICATE OF SERVICE**

4                   I hereby certify that on January 29, 2014, I electronically filed the foregoing document  
5 with the Clerk of the Court using the CM/ECF system which will send notification to all  
6 parties of record.

7                   DATED: January 29, 2014

8                   COZEN O'CONNOR

9  
10                  By: /s/ Jan Young  
11                   Jan Young,  
12                   Legal Assistant to Michael D. Handler

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STATEMENT RE MOTION FOR  
LEAVE TO FILE UNDER TO SEAL - 4  
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